

Making Appeals More Child Friendly

by Martha Pierce

“Once the termination hearing is over and the record closed, both parents and children would benefit from a more timely appellate decision.”

— Judge Gayle Nelson Vogel, Iowa Court of Appeals.

Chrissie’s Story

Three year-old Chrissie was found dirty, disheveled and hungry, wandering near the downtown liquor store in Salt Lake City. The police scoured the neighborhood trying unsuccessfully to find the child’s family. Police located her parents the next day when they raided a meth house. The juvenile court, after establishing jurisdiction over the family, ordered the child into foster care and the parents into treatment programs. The court conditioned the parents’ visits with the child on them providing two consecutive clean drug screens. As the parents’ disinterest in drug treatment grew, visits became fewer and farther between.

During the twelve months Chrissie was in foster care, the parents were each dismissed from their residential drug treatment program for lack of commitment and for testing dirty. The case worker scrambled to find an outpatient program for each parent.

After spending time in the children’s shelter and a shelter home, Chrissie spent her fourth birthday in a foster home and her fifth birthday in yet another foster home. The Division of Child and Family Services (“DCFS”) refrained from putting her in an adoptive home because many adoptive families were skittish about taking a child that hadn’t been legally freed for adoption.

Some time after the twelve month mark, DCFS petitioned to terminate the parents’ rights. Trial was completed six months later. Chrissie was now five. Two months later, the court entered an order terminating the parents’ rights. The mother appealed the order, which resulted in Chrissie remaining ineligible for adoption until the resolution of the appeal. Two years later, the appellate court affirmed the termination order freeing seven year-old Chrissie for adoption.

During this time, Chrissie watched four summers and holiday seasons pass. She knows she has no family, does not belong and is not wanted. Consequently she is angry. As Ohio Supreme Court Justice Evelyn Stratton put it: “There is no award of interest on a judgment that will make her whole.”¹

Our Legislature, aware of a child’s urgent sense of time and need for permanency, has tightened juvenile court time frames for

moving dependency cases through the system. Despite local press to the contrary, Utah has led the nation in setting strict time lines and adopting concurrent planning.² Cases like Chrissie’s can now be resolved at the trial level in twelve months or less. More importantly, Chrissie would often be lucky enough to be placed in a foster/adopt home where the family would be committed to the reunification goal, but would be willing to adopt in the event that reunification efforts were not successful. Now the focus has turned to the appellate court.³

Expediting Appeals

Until recently, cases like Chrissie’s now move quickly through the trial court, only to stall, sometimes for two years or more at the appellate level because of delays at both the trial and appellate levels.⁴ For instance, the trial court would need time to appoint appellate counsel. Appellate counsel often would have to wait to get up to speed on the case until the record was prepared and paginated and the hearings were transcribed. Only then could appellate counsel determine whether there were any meritorious issues for appeal. Delays at the appellate level would occur when counsel would seek and be granted multiple extensions of time for filing the docketing statement or brief.

Ohio Supreme Court Justice Evelyn L. Stratton, a major leader in the national movement to expedite child welfare appeals, recognized that “[c]ases involving termination of parental rights and adoption issues are about the lives of children, rather than contracts, insurance, business disputes, or water rights. . . . to a child, waiting for resolution seems like forever – an eternity with no real family and no sense of belonging.”⁵ Justice Stratton recommended that state appellate courts trim the time frames for appeal, improve case management, prioritize transmission of the record and otherwise reduce delay.⁶

Utah has done just that. The Utah Court of Appeals has designated a clerk to track child welfare cases, to shepherd them through the system and to assist district court personnel prepare and

MARTHA PIERCE has worked at the Office of the Guardian ad Litem since 1994 where her practice focuses on appeals. Previously she has worked at Utah Legal Services and the Utah Court of Appeals.



transmit records and transcripts. Our Court of Appeals has adopted a policy that limits extensions of time for child welfare matters to no more than 45 days for each event. But that is just the beginning.

Appellate Innovations

While most states, including Utah, streamlined an existing system, Iowa rebuilt its system from the ground up.

Judge Gayle Nelson Vogel of the Iowa Court of Appeals came to Utah not long ago to explain to the appellate bench, the juvenile bench and various practitioners, including defense attorneys, how Iowa managed to make its system more child and parent friendly. Judge Vogel's committee, which revised Iowa's appellate procedure for child welfare cases, agreed on one fundamental principle: "Once the termination hearing is over and the record closed, both parents and children would benefit from a more timely appellate decision."⁷ The time between the issuing of the final order at trial and the final order on appeal has been reduced from 397 days to about 100 days. So far, Iowa's abbreviated procedures have survived three constitutional challenges.⁸ What makes this feat even more amazing is that Iowa faces many of the problems our state faces: underfunded counties, inexperienced and overworked defense counsel, and large case loads.

An Iowa State of Mind

Why discuss Iowa? Because Utah's Court Improvement Project⁹ is recommending that Utah adopt a child-friendly, parent-friendly appellate system much like that of Iowa.

The CIP Committee has approved the following innovative changes:

- Trial counsel must file the notice of appeal.
- The notice of appeal must be filed within 15 days.
- The client must sign the notice of appeal, thus demonstrating an actual desire to pursue an appeal.
- The Petition on Appeal must be prepared by trial counsel and filed within 15 days of the notice of appeal. Thus, there is no down time waiting for new counsel to get up to speed.
- The Petition on Appeal, available in a formatted form, is designed to *raise* issues rather than *argue* them. The format is designed to assist even inexperienced counsel in directing the appellate court to the portion in the record where the alleged errors occurred.
- The Petition on Appeal and the trial record arrive at the appellate court within 30 days of the final order on appeal.
- The Appellee, including the Guardian ad Litem may, but are not required to, respond.

- The appellate court will examine the petition and record at the earliest opportunity to determine if the issues raised can be immediately resolved, or if instead they merit full briefing.
- The appellate court may, with or without briefing, resolve an appeal by simple order, by memorandum decision, or by opinion.
- Extensions of time are not favored and are limited to ten days beyond the prescribed time period.

What next? The Court Improvement Project has approved the drafted rules and recommended that they be sent to the Supreme Court's advisory committees on the rules of appellate and juvenile procedure, and that the necessary legislative changes be made.¹⁰ Our appellate court has indicated its willingness to implement the new rules and to be part of the solution to create and follow an expedited process for child welfare appeals. The result will be that more Utah children will find happy endings and loving homes as Utah streamlines its appellate procedures.

1. Evelyn Lundberg Stratton, *Expediting the Adoption Process at the Appellate Level*, 28 Capital Univ. L. Rev. 121, 121 (1999).
2. Two examples come to mind. One, the National Council of Juvenile and Family Court Judges (NCJFJ) designated the Third District Juvenile Court as a Model Court Site in 1995 when Utah enacted its Child Welfare Reform Act. Two, Utah, having already refurbished its system, had to make only minor changes in response to the federal requirements of the Adoption and Safe Families Act of 1997, whereas many states struggled to make requisite changes.
3. "Permanency for a child cannot be achieved if the child's case languishes in the appellate system." Ann L. Keith and Carol R. Flango, *Expediting Dependency Appeals: Strategies to Reduce Delay*, xi, National Center for State Courts (2002).
4. "[T]he standard appellate process is slow. For a child in foster care, a lengthy appellate process can often mean months or years in limbo, without a hope of achieving permanency, to the obvious detriment of the child involved." National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practices in Child Abuse and Neglect Cases*, 38 (2002).
5. Stratton, *supra* note 1.
6. *Id.* at 124-25. *See also* National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Practice in Child Abuse and Neglect Cases* (1995).
7. Gayle Nelson Vogel, J., "Overview of New Appellate Rules for Termination of Parental Rights" 1, (2002).
8. *In re D.B.*, 2002 Iowa App. LEXIS 1257 (no due process violation where petition on appeal had to be prepared prior to receiving transcript); *In re C.M.*, 652 N.W.2d 204 (Iowa 2002) (no due process violation for formatted brief because procedures minimized error, no equal protection violation because process narrowly tailored to advance state's interest in permanency for children); *In re L.M.*, 654 N.W.2d 502 (Iowa 2002) (no equal protection violation where parent has shorter time to file appeal).
9. Utah's Court Improvement Project Committee, formed pursuant to a federal grant to Utah's courts to improve their handling of abuse, neglect, foster care and adoption proceedings. *See* Public Law 103-66, Subsection 1311(d)(2), 13712, 107 Stat. 649. Members of the Court Improvement Project were appointed by Utah's Chief Justice and have been meeting since 1994, the same year that Utah's Child Welfare Reform Act became effective. The Committee consists of various participants in the child welfare community, including parental defense attorneys and juvenile judges. *See* Mark Hardin, *Improving State Courts' Performance in Child Protection Cases*, ABA Center for Children and the Law (1995).
10. The enabling legislation passed. It becomes effective May 3, 2004.